THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No. 2704 of 2001
(Old CMWP No. 8892 of 1986)

Sri Lalmani S/O Sri Hansa Dutt (since dead)
Represented through his L.R. Hari Nandan Pant
S/O late Lalmani, r/o village Chulapai, Post Bardakhan, District Champawat.

… Petitioner

Vs.

1. The District Judge, Pithoragarh.
2. Deputy Collector/Prescribed Authority, Lohaghat, District Pithoragarh.

… Respondents.

Sri B.S.Adhikari, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Date July 24, 2006

P.C.: Hon'ble B.S. Verma, J.
(Substitution Application No. 7890 of 2005)

Heard learned counsel for the rival parties on the application for substitution. The applicant has sought substitution of his name in place of original petitioner Lal Mani, who had already died. The application is not opposed. The application is allowed. Necessary amendments be incorporated during the course of the day, which have already been carried out. Both the parties are ready to argue the case today.

I have heard learned counsel for the parties and perused the material on record.

By means of this writ petition, the petitioner has challenged the judgment and orders dated 23.4.1986 and 14-9-1984 respectively passed by the District Judge Pithoragarh and the Prescribed Authority concerned respectively. By the order dated 14-9-1984, the Prescribed Authority confirmed the notice under Section 4 of the U.P.Act No. 22 of 1972 and held that the petitioner had encroached upon the public utility land. The appellate court also dismissed the appeal preferred by the original appellant

Lalmani. The impugned orders are contained in Annexure Nos. 1 and 2 to the writ petition.

Brief facts of the case were that proceedings were initiated under the provisions of U.P.Act No. 22 of 1972 against the petitioner on the challani report submitted by Patti Patwari Wardakhan to the effect that Lalmani had encroached upon the land of plot no. 77 of Khata No. 180 measuring 5 Muthi. The occupant filed reply alleging that a lease was granted in the year 1935 in his favour and during the last settlement operation in the year 1962, vide order dated 25.10.1962 of the Deputy Commissioner, he became the owner and rightful occupant of the disputed land. The Prescribed Authority recorded the statements of witnesses produced from both the sides and, ultimately, came to the conclusion that the O.P. Lalmani was an unauthorized occupant and accordingly passed the impugned order and when the petitioner Lalmani preferred an appeal, the appellate court did not find favour with the appellant and upheld the order passed by the Prescribed Authority, which gave rise to the present writ petition.

In the course of arguments, learned counsel for the petitioner submitted that the present case is squarely covered by the judgment of this Court dated 25-5-2006 passed in Writ Petition No. 3235 (M/S) of 2001, Krishna Kant Vs. Additional District Judge Nainital and others, whereby a bunch of 42 cases was decided by common judgment. The learned Standing Counsel for the State has fairly conceded to this fact that the facts of the case at hand are similar and this Court had allowed the writ petitions, holding that it shall be open to the State to proceed with the eviction of the petitioners in accordance with the provisions of Z.A. and L.R.Act and other allied laws as well as that the petitioner may get their title declared by filing suit under the provisions of the Z.A. & L.R.Act and KUZA Act.

I have perused the earlier judgment dated 25.5.2006 and I find that the present writ petition may be decided in terms of the same.

Accordingly, the present writ petition is allowed in terms of judgment of this Court dated 25.5.2006 passed in W.P. No. 3235 (M/S) of 2001 Krishna Kant Vs. Additional District Judge, Nainital. No order as to costs.

RCP **(B.S. Verma, J.)**